

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6929

Petition of Adelpia Business Solutions of)
Vermont, Inc., d/b/a TelCove, for Approval)
under 30 V.S.A. § 107, for a Transfer of)
Control to Bay Harbour Management, LC, in)
Connection With TelCove's Reorganization)
Under Chapter 11 of the Bankruptcy Act)

Order entered: 3/17/2004

I. INTRODUCTION

On March 8, 2004, Adelpia Business Solutions of Vermont, Inc., d/b/a TelCove ("TelCove" or the "Company"), filed an amended petition with the Vermont Public Service Board ("Board") requesting, in connection with the recapitalization of TelCove and its parent, Adelpia Business Solutions, Inc. ("ABS"), and as part of both companies' reorganization under Chapter 11 of the Bankruptcy Act, that the Board approve the acquisition by Bay Harbour Management, LC ("Bay Harbour"), pursuant to 30 V.S.A. § 107, of indirect control of TelCove. TelCove supported the petition by the prefiled testimony and exhibits of Mr. Richard Nevins. TelCove filed a Proposal for Decision on March 12, 2004.

On March 11, 2004, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending that the Board approve indirect acquisition of a controlling interest in TelCove, under 30 V.S.A. § 107, without investigation or hearing. The Department notes that the proposed reorganization is the product of extensive negotiation, reflects a balance of interests, and is far superior to a liquidation alternative or a prolonged reorganization. The Department concludes that the proposed transaction will promote the public good.

The Board has reviewed the petition and the accompanying documents and agrees that approval should be granted without hearing.

II. FINDINGS OF FACT

1. TelCove is a "company" within the meaning of Section 201 of Title 30 of the Vermont Statutes Annotated, provides intrastate telecommunication services as defined under Subsection

(5) of Section 203 thereof, and as such is subject to the Board's jurisdiction. Am. Pet. at 1.

2. TelCove, as well as its parent, ABS, a corporation organized under the laws of the State of Delaware, have each filed for reorganization under Chapter 11 of the federal Bankruptcy Act, and TelCove continues to provide telecommunication services in Vermont as a debtor in possession. Am. Pet. at 1; Nevins pf. at 2, 6.

3. ABS has prepared, submitted, and obtained approval for a reorganization plan (the "Reorganization Plan" or "Plan") in the Bankruptcy Court for the Southern District of New York. Am. Pet. at 1; Nevins pf. at 6-7; exhibit TelCove-2; *see In re Adelphia Business Solutions, Inc., et al*, Chapter 11 Case No. 02-11389 (REG) (Order Confirming Debtors' Modified Third Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code) (Bankr. S.D.N.Y. December 19, 2003).

4. To implement the Plan, ABS has agreed to issue (a) new common stock, including warrants to purchase such stock, to holders of unsatisfied claims against ABS or certain of its affiliates (the "Claims Holders") and (b) warrants to purchase such stock to ABS's new management (herein referenced as "New Managers"). Am. Pet. at 1-2; Nevins pf. at 4.

5. Some of the Claims Holders have significant claims such that they might acquire, on the date of ABS' reorganization, sufficient stock, acquired either directly or by the exercise of the warrants, as to acquire ten percent or more of the voting securities of ABS. Nevins pf. at 4.

6. Under the Plan, sixty percent of ABS' stock will be distributed to holders of ABS' secured debt and forty percent of ABS' stock will be distributed to ABS' unsecured creditors before implementation of a cash-out option, and all creditors will have an option to receive their distribution in cash rather than in stock, subject to available "Excess Cash" as defined in the Plan. Am. Pet. at 2; *see* exhibit TelCove-2 at 30-39.

7. At the present time, it appears that Bay Harbour, a limited corporation organized under the laws of Florida, will acquire ten percent or more of the voting securities of ABS. Nevins pf. at 5.

8. Bay Harbour, is an SEC-registered investment manager that tries to identify and then make investments in sound companies that offer an attractive risk-reward profile while facing some form of distress (including companies in bankruptcy reorganizations). Nevins pf. at 5.

9. TelCove does not currently anticipate that any other Claims Holder, any single

member of ABS' New Managers or any other person will acquire ten percent or more of the voting securities of ABS and therefore a controlling interest in TelCove as defined in 30 V.S.A. § 107. Nevins pf. at 5.

10. TelCove is a competitive, local-exchange carrier that has built a statewide, fiber-based network to serve governmental, institutional, health-care and business customers throughout Vermont. Nevins pf. at 5.

11. While in reorganization proceedings, ABS has continued to operate its telecommunications business, including TelCove's business in Vermont, and in 2003, TelCove had gross revenues of approximately \$17 million, provided service to about 900 customer locations, operated approximately 15,000 access-line equivalents and, in general, provided a competitive, broadband alternative to incumbent local-exchange carriers and other providers of broadband service in Vermont. Nevins pf. at 5-6.

12. TelCove is today the only competitive local-exchange carrier offering a wireline, facilities-based alternative that is capable of serving customers throughout the state. Nevins pf. at 6.

13. Approval of the Reorganization Plan as requested in the amended petition will enable ABS to implement the Plan, which has already been approved in the Bankruptcy Court, and to continue to serve its governmental, institutional, health-care and business customers throughout Vermont as a competitive, local-exchange carrier. Therefore, the Reorganization Plan, including the contemplated acquisition of indirect control of TelCove by Bay Harbour, will promote the public good and should be approved by the Board. Am. Pet. at 3; Nevins pf. at 7.

III. CONCLUSIONS OF LAW AND DISCUSSION

The proposed transactions require Board approval under 30 V.S.A. § 107, which applies to a direct or indirect acquisition of a controlling interest in a Vermont utility. Under 30 V.S.A. § 107(a), "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board] . . . without the approval of the [Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a company." 30 V.S.A. § 107(c)(1). To approve the

acquisition of such a controlling interest, the Board must first find that it will "promote the public good." 30 V.S.A. § 107(b).

The standard is met in this case. The transactions contemplated by the Reorganization Plan, including the contemplated acquisition of indirect control of TelCove by Bay Harbour will promote the general good by enabling ABS and TelCove to emerge from bankruptcy and proceed with a Reorganization Plan, so TelCove may continue to provide telecommunications services to its customers throughout Vermont through a network that provides a competitive, broadband service. Accordingly, the Board finds that the transactions contemplated by the Reorganization Plan, including the contemplated acquisition of indirect control of TelCove by Bay Harbour, will promote the general good of the state and should be approved.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The indirect acquisition of control of TelCove by Bay Harbour, in connection with the Reorganization Plan, will promote the general good of the state and therefore is approved.
2. Petitioner shall file a letter notifying the Board of the completion of the proposed indirect acquisition of TelCove by Bay Harbour, within ten days of such completion.

DATED at Montpelier, Vermont, this 17th day of March, 2004.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

Filed: March 17, 2004

Attest: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.